



INTERIOR BOARD OF INDIAN APPEALS

Estate of Delmer Arrow

38 IBIA 60 (08/08/2002)

Related Board case:  
37 IBIA 211



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ESTATE OF DELMER ARROW : Order Docketing Appeals and Affirming  
: Modification Order  
:  
: Docket Nos. IBIA 02-140  
: IBIA 02-141  
:  
: August 8, 2002

Appellants Elmer Arrow (Docket No. IBIA 02-140) and Betty Grace Arrow Marshall (Docket No. IBIA 02-141) seek review of a June 19, 2002, Modification Order of Heir Determination issued by Administrative Law Judge Marcel S. Greenia in the estate of Delmer Arrow (Decedent), IP TC 087 G 00, 000-346-064C. Judge Greenia's modification order was issued pursuant to the Board's order of April 10, 2002, which affirmed Judge Greenia's February 11, 2002, denial of rehearing but vacated the September 26, 2002, determination of heirs issued by Administrative Law Judge David A. Clapp. 1/ Estate of Delmer Arrow, 37 IBIA 211 (2002).

Judge Greenia's June 19, 2002, order modified Judge Clapp's determination of heirs by adding as heirs two of Decedent's children, Selmer Arrow and David Arrow, who had been, Judge Greenia determined, inadvertently omitted from the original determination.

Appellants do not object to the inclusion of these two individuals as heirs of Decedent. However, they repeat the objections made earlier by Appellant Elmer Arrow to the application of South Dakota laws of intestate succession to this estate.

The Board rejected Elmer Arrow's argument on this point in its April 10, 2002, order and specifically found that the intestate succession laws of the State of South Dakota applied to this estate. That issue has already been decided and will not be revisited.

Appellants appear to be contending that the Yankton Sioux Tribe should conduct a referendum of tribal members concerning adoption of a tribal probate code for application to trust or restricted property on the Yankton Sioux Reservation. The Tribe has the option of

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1/ The Board's Apr. 10, 2002, order incorrectly stated that Judge Clapp's determination of heirs was issued on Sept. 20, 2001, rather than Sept. 26, 2001.

adopting its own probate code under 25 U.S.C. § 2205. Once the requirements of section 2205 have been met, the tribal probate code would become applicable to the Yankton Sioux trust or restricted estates of decedents who die on or after the effective date of the probate code. Although there is no way a tribal probate code could be applied retroactively to this estate, Appellants may wish to encourage the Tribe to adopt such a code for application in the future.

Appellants have raised no issue that could alter the outcome of the modified determination of heirs included in Judge Greenia's June 19, 2002, order. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Greenia's June 19, 2002, order is affirmed.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge